

REMARKS

Claims

Claims 1-9, 11-12, 15-25, and 29-35 were pending in the application. Claims 2-6, 8, 9, 11, 12, 15-25, 31, and 33-35 have been amended. Claims 1-9, 11-12, 15-25, and 29-35 accordingly remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Amendments to the Drawings

Applicant respectfully requests the deletion of FIG. 3D as provided in the replacement sheet. Applicant respectfully submits no new matter has been added.

Amendments to the Specification

Applicant respectfully requests the Specification be amended as noted above. Applicant respectfully submits no new matter has been added. Support for the amendments to the specification may be found, for example, in FIGS. 3B, 3C, 4, and 5.

Drawings

The Examiner objected to the drawings under 37 C.F.R. 1.83(a) for failing to show an opening configured to receive a handle. Applicant disagrees that the drawings fail to show an opening configured to receive a handle.

The Examiner states:

All of the figures with the exception of figures 4 and 5 show an obstruction (strut, loop or partial loop) that would prevent an opening from receiving a handle as claimed. It is noted in figures 4 and 5 that even though no obstruction is shown that an obstruction is part of the construction as evidenced by page 11, lines 12-15 of the specification entered March 25, 2004. For the purposes of examination, only figure 3D of the instant application is considered.

(Office Action, page 3) (emphasis added)

The Examiner acknowledges that Figures 4 and 5 do not show an obstruction that would prevent an opening from receiving a handle as claimed. Despite Figures 4 and 5 showing an opening without any obstruction (as acknowledged by the Examiner), the Examiner nevertheless appears to take to the position that an obstruction must be read into figures 4 and 5 as “part of the construction” in light of page 11, lines 12-15 of the specification. The specification states:

It is envisaged that the handles described in Figures 4 and 5 may be incorporated into the embodiments such as those shown in Figures 1, 2 and 3.

Applicant disagrees that “an obstruction is part of the construction” of figures 4 and 5. The cited portion of the specification envisages that the handles described in Figures 4 and 5 “may be” incorporated into embodiments “such as” those shown in Figures 1, 2 and 3, but are not limited to the embodiments shown in Figures 1, 2, and 3. In any event, the illustration shown in Figure 3B, far from requiring an “obstruction” as the Examiner asserts, contradicts having an obstruction in the opening of the upper grill. For example, if there were an obstruction to the handle in Fig. 3B, the handle of the lower grill could not extend above the plane of the grill, as the handle is clearly shown to do. Thus, Figure 3B itself illustrates, by way of a side view, a grill with an opening configured to receive a handle of a similar grill when stacked. A patent disclosure includes a written description to be read by one reasonably skilled in the art. See *United States v. Telecommunications, Inc.*, 857 F.2d 778, 785 (Fed Cir. 1988). There is no reason that a person skilled in the art would read into Figures 4 and 5 an “obstruction”, when the written description does not refer to any “obstruction”, especially since the specification describes and shows embodiments in which “the handle of each grill 10 can pass through the opening of the next grill 10 in the stack”. For at least the above reasons, Applicant submits that at least FIGS. 3B, 4, and 5 illustrate an opening that is configured to receive a handle of a substantially similar grill when substantially similar grills are stacked. Applicant respectfully requests the Examiner withdraw the objections to the drawings.

In the Office Action mailed May 1, 2008, the Examiner appears to consider that the “strut” shown in the center of the grill in FIG. 3A is in error. To the extent that Applicant’s disclosure of a strut in FIG. 3A could be considered an “error” as being inconsistent with

Applicant's disclosure elsewhere in the specification of an opening for receiving a handle (as described, for example, relative to FIG. 3B), Applicant submits that any such error would be an obvious error to one skilled in the art. Applicant has amended the specification to clarify that the embodiments including stackable grills described relative to FIG. 3B are not limited to the structure disclosed in FIG. 3A. An amendment to correct an obvious error does not constitute new matter where one skilled in the art would not only recognize the existence of error in the specification but also the appropriate correction. *In re Odd*, 443 F.2d 1200, 170 USPQ 268 (CCPA 1971). Applicant submits that a person skilled in the art would easily apprehend that, for embodiments in which grills with handles would be stacked as described relative to FIG. 3B, the middle strut shown in FIG. 3A would not be included.

New Matter

The Examiner takes the position that Figures 3D and the amendments made to the specification dated July 31, 2008 are not supported by the original disclosure as filed. Although Applicant disagrees with the Examiner's position, to expedite prosecution, Applicant has cancelled Figure 3D and the amendments made to the specification dated July 31, 2008. Applicant respectfully submits that the application, as amended, does not include new matter.

35 U.S.C. §112, Paragraph 1, Rejections

The Examiner rejected claims 1-6, 8, 9, 11, 12, 15-25 and 29-35 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The test for enablement is whether one reasonably skilled in the art could make or use the invention from the disclosure in the patent coupled with information known in the art without undue experimentation. *United States v. Telecommunications, Inc.*, 857 F.2d 778, 785 (Fed Cir. 1988). A patent need not teach, and preferably omits, what is well known in the art. *In re Buchner*, 929 F.2d 660, 661 (Fed. Cir. 1991). Applicant's specification includes a description of an opening arranged so that the handle of each grill 10 can pass through the opening of the next grill 10 in the stack. Figures 3B and 3C illustrate examples of stacked grills. Figures 4 and 5 illustrate grill that include openings adjacent to a handle. In light of at least page 10, lines 8-19 and Figures 3B, 3C, 4, and 5,

Applicant submits that a person reasonable skilled art could make and use the apparatus recited in each of claims 1-6, 8, 9, 11, 12, 15-25 and 29-35 without any undue experimentation.

35 U.S.C. §102 Rejections

The Examiner rejected claims 1-4, 8, 11, 17, 18, 20, 34, and 35 under 35 U.S.C. 102(b) as being anticipated by Schlosser, et al. (U.S. Patent No. 5,490,452) (hereinafter “Schlosser”).

The standard for “anticipation” is one of strict identity. Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. M.P.E.P. 2131; *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 1 recites:

a fan housing...

a grill mounted on a surface of the fan housing;

...

wherein the substantially planar portion of the grill comprises an opening configured to receive a handle of a substantially similar grill when two or more substantially similar grills are stacked, apart from their respective fan housings, such that the substantially planar portions of the stacked grills are substantially parallel when the grills are stacked.

In the Examiner’s rejection of claim 1, the Examiner makes reference to only one element by reference number, namely “cooking grate assembly 100”. Schlosser discloses a cooking grate assembly for use with barbecue grills (Schlosser, Abstract). The Examiner appears to take the position that “cooking grate assembly 100” is a grill. Even if cooking grate assembly 100 is considered to be a “grill”, however, Schlosser does not appear to mention fans or fan housings at all, much less mounting a grill on a surface of a fan housing. Further, Schlosser does not disclose grills having opening configured to receive a handle of a substantially similar grill when

two or more substantially similar grills are stacked. For at least these reasons, Applicant submits that Schlosser does not disclose, teach, or suggest at least “**a fan housing**; a grill mounted on a surface of the fan housing, the grill comprising: a substantially planar portion... **wherein the substantially planar portion of the grill comprises an opening configured to receive a handle of a substantially similar grill when two or more substantially similar grills are stacked**, apart from their respective fan housings, such that the substantially planar portions of the stacked grills are substantially parallel when the grills are stacked” as recited in claim 1.

Applicant respectfully submits claim 1 and claims dependent thereon are allowable for at least the above reasons. Applicant respectfully requests the Examiner withdraw the rejection to claim 1 and claims dependent thereon.

35 U.S.C. §103 Rejections

Claims 5, 6, 9, 12, 15, 16, 19, 21-25, and 29-33

The Examiner rejected claims 5, 6, 9, 12, 15, 16, 19, 21-25, and 29-33 under 35 U.S.C. 103(a) as being unpatentable over Schlosser in view of Bull, et al. (U.S. Patent No. 5,822,186) (hereinafter “Bull”).

Schlosser and Bull do not teach or suggest, either separately or in combination, at least “wherein the handle comprises a first piece of wire extending in a loop or partial loop away from said substantially planar portion; wherein said handle comprises at least one additional piece of wire, each additional piece of wire being shaped such that it is substantially parallel to said first piece of wire over the length of that additional piece of wire” as recited in claim 29. The Examiner does not provide any location in the reference for at least this teaching. As stated in MPEP §2141:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."¹ *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396.

Furthermore, while the Examiner points to the rejection of claim 9 that states: "...it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8 (Office Action mailed 5/01/08, page 12)." Applicant respectfully asserts the elements of claim 29 noted above are not a "mere duplication." The noted element of claim 29 recites a construction of a handle comprising multiple pieces of wire along with shapes and placements of the wires. Applicant respectfully asserts that a claim is not obvious based solely on the grounds that it includes two or more similar parts. Applicant respectfully notes the Examiner has not provided any location in the references for the teaching of this element and Applicant respectfully asserts the cited art does not disclose, teach, or suggest at least "wherein the handle comprises a first piece of wire extending in a loop or partial loop away from said substantially planar portion; wherein said handle comprises at least one additional piece of wire, each additional piece of wire being shaped such that it is substantially parallel to said first piece of wire over the length of that additional piece of wire" as recited in claim 29. Applicant respectfully submits claim 29 and claims dependent thereon are allowable for at least the above reasons. Applicant respectfully requests the Examiner withdraw the rejection to claim 29 and claims dependent thereon.

Schlosser and Bull do not disclose, teach, or suggest, either separately or in combination, at least "a handle extending out of the substantially planar portion so as to extend away from the surface of the fan housing when the grill is mounted thereon; and one or more mounting formations for mounting the grill on the fan housing; wherein the at least one mounting formation and a portion of said handle are integrally formed from a single piece of shaped wire" as recited in claim 30. The Examiner does not point to any teachings in the cited reference, but

instead states: “it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Howard v. Detroit Stove Works... (Office Action mailed 5/1/2008, page 17).” Applicant respectfully notes the Examiner has not provided any teachings in the references for a wire handle portion and a mounting formation formed of wire. Applicant respectfully submits the Examiner has not cited any references which show (and the Examiner has not provided any locations in the references which show) parts that simply need to be put together to form “wherein the **at least one mounting formation and a portion of said handle** are integrally formed from a single piece of shaped wire (emphasis added)” as recited in claim 30. Applicant respectfully submits claim 30 and claims dependent thereon are allowable for at least the above reasons. Applicant respectfully requests the Examiner withdraw the rejection to claim 30 and claims dependent thereon.

Schlosser and Bull do not disclose, teach, or suggest, either separately or in combination, at least “wherein said substantially planar portion comprises at least one strut, each strut attached to at least one of said loops or partial loops in at least one place; and wherein at least one strut and at least a portion of said handle are integrally formed from a single piece of shaped wire” as recited in claim 32. The Examiner cites the same case as cited in respect to claim 30, however, Applicant respectfully submits the Examiner has not cited any references which show (and the Examiner has not provided any locations in the references which show) parts that simply need to be put together to form “wherein said substantially planar portion comprises at least one strut, each strut attached to at least one of said loops or partial loops in at least one place; and wherein **at least one strut and at least a portion of said handle** are integrally formed from a single piece of shaped wire (emphasis added)” as recited in claim 32. Applicant respectfully submits claim 32 and claims dependent thereon are allowable for at least the above reasons. Applicant respectfully requests the Examiner withdraw the rejection to claim 32 and claims dependent thereon.

Claims 5, 6, 9, 12, 15, 16, 19, 21-25, dependent from claim 1, are also believed allowable for at least the above reasons. Applicant respectfully requests the Examiner withdraw the rejections to claims 5, 6, 9, 12, 15, 16, 19, 21-25.

Conclusion

In light of the foregoing amendments and remarks, Applicants submit that all pending claims are in condition for allowance, and an early notice to that effect is earnestly solicited. If a phone interview would speed allowance of any pending claims, such is requested at the Examiner's convenience.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505\5681-88700.

Respectfully submitted,



Chris D. Thompson
Reg. No. 43,188
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin,
Kowert & Goetzel, P.C.
P.O. Box 398
Austin, Texas 78767-0398
Phone: (512) 853-8800
Date: 12-29-2008